

## HISTORICAL DIVISION[223]

### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 303.1A, the Director of the Department of Cultural Affairs hereby amends Chapter 48, “Historic Preservation and Cultural and Entertainment District Tax Credits,” Iowa Administrative Code.

The amendments to Chapter 48 clarify the procedures by which the public may access the historic preservation and cultural and entertainment district tax credits and are based on constituent input.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary as the changes are based on constituent input and the amendments confer a benefit to constituents.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and these amendments should be made effective on June 19, 2008, as they confer a benefit on and remove a restriction from the constituents interested in applying for historic preservation and cultural and entertainment district tax credits.

The Department adopted these amendments on June 18, 2008.

These amendments are also published herein under Notice of Intended Action as **ARC 6927B** to allow for public comment.

These amendments became effective on June 19, 2008.

These amendments are intended to implement Iowa Code chapters 303 and 404A.

The following amendments are adopted.

ITEM 1. Amend rule 223—48.2(303,404A) as follows:

**223—48.2(303,404A) Definitions.** The definitions listed in Iowa Code section 17A.2 and rules 223—1.2(17A,303), 223—1.6(303), 223—13.2(303), 223—22.2(303), and 223—35.2(303) shall apply to terms as they are used throughout this chapter. In addition, the following definitions apply:

“*Assessed value*” means the amount of the most current property tax assessment.

“*Commercial property*” means a building with used for retail, office, or other business space uses ~~not otherwise classified as residential use pursuant to the Iowa state building code.~~

“*Historic tax credit(s)*” means the historic preservation and cultural and entertainment district tax credit established in Iowa Code chapter 404A.

“*Mixed-use property*” means a ~~commercial~~ property that includes three or more residential units ~~in the same building and~~ and may also contain a commercial property component in the same building.

“*Qualified rehabilitation costs*” means qualified rehabilitation expenditures under the federal rehabilitation credit in Section 47 of the Internal Revenue Code.

“*Reserved tax credit*” means the amount of tax credits set aside from the available tax credit fund for an approved project.

“*Residential property*” means a building with two or fewer residential units.

“*Standards*” means the Standards for Rehabilitation as described in the U.S. Secretary of the Interior’s Standards for the Treatment of Historic Properties.

“*Tax basis*” means the same as defined in department of revenue 701—subrule 42.15(3).

“*Tax credit year*” means the tax year in which a tax credit certificate holder is eligible to redeem a tax credit certificate based on the availability of tax credit funds for an eligible project.

ITEM 2. Amend rule 223—48.3(303,404A) as follows:

**223—48.3(303,404A) Eligible properties.** The following properties are eligible for the historic tax credit:

1. Property verified as listed on the National Register of Historic Places or determined eligible for such listing through the established procedures of the state historic preservation office (SHPO);

2. Property designated as a building contributing to the historic significance of a district listed on the National Register of Historic Places or ~~eligible for such designation by being located in an area previously surveyed and evaluated as eligible for listing on the National Register of Historic Places as a historic district~~ contributing to the historic significance of a district determined eligible for such listing through the established procedures of the SHPO;

3. A property or district designated as a local landmark by a city or county ordinance; or

4. A barn constructed prior to 1937.

ITEM 3. Amend rule 223—48.4(303,404A) as follows:

**223—48.4(303,404A) Qualified and nonqualified rehabilitation costs.**

**48.4(1) to 48.4(4)** No change.

**48.4(5)** Only qualified rehabilitation costs incurred ~~beginning two years prior to the project completion date and ending on the project completion date~~ during the 24-month period immediately prior to the project completion date may be used for determination of historic tax credits, excluding any costs incurred prior to inception of this program.

*a. and b.* No change.

**48.4(6)** Any submission of a part three of the application with qualified rehabilitation costs of more than \$500,000 shall include a certified statement by a certified public accountant verifying that the expenses statement includes only qualified rehabilitation costs incurred in the time period established in subrule 48.4(5).

ITEM 4. Amend rule 223—48.5(303,404A) as follows:

**223—48.5(303,404A) ~~Eligibility of projects, rehabilitation costs~~ Rehabilitation cost limits and amount of credit.**

**48.5(1)** For commercial or mixed-use property, the amount of rehabilitation costs must equal at least 50 percent of the assessed value of the property, excluding the land, prior to rehabilitation.

**48.5(2)** For residential property or for barns ~~built before 1937~~, the amount of rehabilitation costs must equal at least \$25,000 or 25 percent of the assessed value of the property, excluding the land, prior to rehabilitation, whichever is less.

**48.5(3)** For residential or mixed-use property, the amount of rehabilitation costs shall not exceed \$100,000 per residential unit ~~plus the~~ excluding any qualified rehabilitation costs for the commercial space and excluding any qualified rehabilitation costs for the weather surfaces of the building envelope including exterior windows and doors.

**48.5(4)** The historic tax credit for a project shall equal 25 percent of the qualified rehabilitation costs.

**48.5(5)** Applicants may develop subsequent projects for qualified rehabilitation costs not previously included in a tax credit application for a building which had tax credits previously reserved or awarded. Each subsequent application shall meet eligibility requirements as stated in subrules 48.5(1) to 48.5(4) and shall be reviewed individually and independently. The cumulative total for applications for buildings funded through the small projects funding queue shall not exceed \$500,000. Any application for a building previously funded through the small projects funding queue that causes the cumulative total for that building to exceed \$500,000 may be considered for funding in accordance with rule 223—48.8(303,404A).

ITEM 5. Amend rule 223—48.6(303,404A) as follows:

**223—48.6(303,404A) Application and review process.**

**48.6(1)** All applications for historic tax credits shall be on forms and in accordance with instructions provided by the SHPO. Application forms are available from the Tax Incentives Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319-0290. Applications may also be downloaded from the following Web site: [www.state.ia.us/government/dca/shsi/preservation/financial assistance/state tax credit/ia state tax credit.html](http://www.state.ia.us/government/dca/shsi/preservation/financial%20assistance/state%20tax%20credit/ia%20state%20tax%20credit.html).

*a. and b.* No change.

c. Part three of the application provides the information and documentation required to request certification of project completion and must include all requested information including certification in accordance with subrule 48.4(6). SHPO staff shall notify the applicant in writing if part three of the application is incomplete. Incomplete applications will not be processed. Incomplete applications may be subject to abandonment as outlined in rule ~~48.10(303,404A)~~ 223—48.11(303,404A).

d. Amendments to applications. An applicant may amend an approved part two of the application to notify SHPO of, and to request review of, modifications to the original description of the rehabilitation project. Amendments to part two of the application shall not include modification of the rehabilitation costs estimated in the originally approved part two of the application. Amendments to part two of the application shall not result in the reservation of additional tax credits for a project.

**48.6(2)** and **48.6(3)** No change.

**48.6(4)** ~~An~~ A part two of an application that ~~mirrors~~ includes the same scope of work as a rehabilitation project which qualifies for the federal rehabilitation credit under Section 47 of the Internal Revenue Code shall automatically be approved ~~for the state historic tax credit~~ when submitted in accordance with rule 223—48.8(303,404A) and to the extent that all historic tax credits appropriated for the fiscal year have not already been ~~awarded~~ reserved.

**48.6(5)** Response to application parts.

a. No change.

b. Review of part two of the application shall result in one of three responses which may be provided to the department of revenue:

(1) to (3) No change.

~~(4) —The SHPO shall provide a copy of the SHPO’s response to the department of revenue.~~

c. Review of part three of the application shall result in one of two responses which may be provided to the department of revenue:

(1) The completed rehabilitation meets the Standards and is consistent with the historic character of the property or the district in which it is located. Effective on the date of approval of part ~~two~~ three of the application, the project shall be designated a “certified rehabilitation”; or

(2) No change.

~~(3) —The SHPO shall provide a copy of the SHPO’s response to the department of revenue. Questions concerning specific tax consequences or interpretation of the state code should be addressed to the department of revenue.~~

~~d. —An authorized representative of the SHPO, with due notice to the applicant, may inspect completed projects to determine if the work meets the Standards. The SHPO reserves the right to make inspections at any time up to five years after completion of the rehabilitation and to revoke certification if it is determined that the rehabilitation project was not undertaken as presented by the owner in the application and supporting documentation, or if the owner, upon obtaining certification, undertook unapproved further alterations as part of the rehabilitation project that are inconsistent with the Standards.~~

d. Questions concerning specific tax consequences or interpretation of the state tax code must be addressed to the department of revenue.

**48.6(6)** No change.

**48.6(7)** Approval of part two of the application.

a. and b. No change.

c. An authorized representative of the SHPO, with due notice to the applicant, may inspect projects to determine if the work meets the Standards.

**48.6(8)** Approval of part three of the application. Upon approval of part three of the application, the SHPO shall issue a tax credit certificate to the applicant in an amount equal to 25 percent of the qualified rehabilitation costs as estimated in part two of the application for the tax credit year originally reserved for the project upon approval of part two of the application, unless the qualified rehabilitation costs in part three of the application differ from the estimated qualified rehabilitation costs in part two of the application.

a. If the qualified rehabilitation costs documented in part three of the application are less than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall return any unused tax credits to the available tax credit pool for other projects in the same funding queue.

b. If the qualified rehabilitation costs documented in part three of the application are greater than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue a tax credit certificate to the applicant in an amount equal to 25 percent of the documented qualified rehabilitation costs that exceed the qualified rehabilitation costs estimated in part two of the application for the next available tax credits in the same funding queue from which tax credits were initially awarded according to procedures established in rule 223—48.8(303,404A).

ITEM 6. Amend rule 223—48.8(303,404A) as follows:

**223—48.8(303,404A) Sequencing of applications for review.**

**48.8(1) Order of review.** The SHPO anticipates the receipt of a large number of applications for historic tax credits for projects with qualified rehabilitation costs in excess of \$500,000 at the beginning of each state fiscal year. At the start of each state fiscal year, the SHPO will utilize a project review sequencing system to establish the order in which applications will be reviewed. Applications for projects with qualified rehabilitation costs under \$500,000 making application for credits from the small project funding queue will be accepted and reviewed throughout the calendar year until all available credits from that funding queue are reserved. When all available credits are reserved from the small project funding queue, subsequent applications will be accepted utilizing the procedures in subrules 48.8(1) to 48.8(6) for projects with qualified rehabilitation costs in excess of \$500,000.

**48.8(2) Filing window.** ~~Applications~~ Projects with qualified rehabilitation costs documented in part three of the application in excess of the estimated rehabilitation costs in part two pursuant to paragraph 48.6(8) “b” and applications for state historic tax credits received during the first ten working days of the state fiscal year shall be included in a project review sequencing system to determine the order in which they will be reviewed.

**48.8(3) Initial sequencing process.** An initial sorting process based on the status of the project application at the start of the state fiscal year will be used to associate applications with the appropriate initial sequencing category. Following initial sorting into a category, each application within the assigned category will be sequenced in accordance with rule 223—48.8(303,404A).

~~a. —Category A projects are comprised of a state historic tax credit application that includes the same scope of work previously submitted and approved, as documented by a signed part two of the federal tax credit application approved prior to the first business day of the state fiscal year. Applications eligible for this category must be received within the specified filing window and must include one of the following: a new part two of the application with part one of the application already on file; new parts one and two of the application; new parts one, two and three of the application; an amendment to part two of the state application; or part three of the application associated with a previously approved part two of the state application when actual qualified rehabilitation costs are in excess of the estimated qualified rehabilitation costs in part two of the application.~~

~~b. —Category B projects are comprised of a state historic tax credit application without an approved part two of the federal tax credit application on file as of the first state business day of the filing window. Applications in this category must have part one of the application for historic tax credits on file prior to the first state business day of the filing window, and part two of the application must be received within the specified filing window.~~

~~c. —Category C projects are comprised of an entirely new state historic tax credit application received within the specified filing window and consisting of parts one and two of the application or parts one, two and three of the application.~~

a. —Category A projects are comprised of projects with qualified rehabilitation costs documented in part three of the application in excess of the estimated rehabilitation costs in part two pursuant to paragraph 48.6(8) “b” and which could not be otherwise reserved from available credits in the appropriate funding queue.

b. Category B projects are comprised of a state historic tax credit application submitted during any previous year's filing window, and was included in that year's sequencing system, and did not receive a tax credit reservation. Category B projects must be resubmitted during the present year's filing window.

c. Category C projects are comprised of a state historic tax credit application that includes the same scope of work approved for federal rehabilitation tax credits, as documented by a signed part two of the federal tax credit application approved prior to the first business day of the state fiscal year, and applications with rehabilitation costs in excess of \$500,000 which are not eligible for the federal program. Applications eligible for this category must include one of the following:

- (1) A new part two of the application with part one of the application already on file;
- (2) New parts one and two of the application; or
- (3) New parts one, two and three of the application.

d. Category D projects are comprised of an entirely new state historic tax credit application not meeting the requirements for any other category and having been received within the specified filing window. Projects may consist of parts one and two of the application, parts two and three of the application with a part one having already been submitted, or parts one, two and three of the application.

**48.8(4) Secondary sequencing process.** Using a random number generator, SHPO staff will assign unique, random numbers to all applications that are eligible for inclusion in the review sequencing system within each category of the initial sequencing system. Applications within each category shall then be placed in numeric order from lowest to highest. SHPO staff shall then create a master review sequence list, with category A applications reviewed first, category B applications reviewed next, category C applications reviewed next, and category ~~C~~ D applications reviewed last.

**48.8(5) and 48.8(6)** No change.

~~**48.8(7) Subsequent applications.** Applications for part two or amendments to part two of an application that are received by the SHPO between the tenth business day of the state fiscal year and the last business day of the state fiscal year shall be reviewed in order of receipt so long as tax credits are available for reservation.~~

ITEM 7. Amend rule 223—48.9(303,404A) as follows:

**223—48.9(303,404A) Reserved tax credits.**

**48.9(1)** No change.

**48.9(2)** If the amount of estimated qualified rehabilitation costs changes during the course of project implementation, the applicant may ~~file an amendment to part two of the application with the SHPO or may~~ include those costs in part three of the application.

~~**48.9(3)** Upon written approval of an amendment to part two of an application, the SHPO shall reserve an estimated tax credit under the name of the applicant in an amount equal to 25 percent of the qualified rehabilitation costs estimated in the amendment to part two for the next available tax credit year.~~

~~**48.9(4)**~~ **48.9(3)** The SHPO shall not reserve tax credits for more than two state fiscal years beyond the current state fiscal year.

ITEM 8. Renumber rules ~~223—48.10(303,404A)~~ to ~~223—48.16(303,404A)~~ as ~~223—48.11(303,404A)~~ to ~~223—48.17(303,404A)~~.

ITEM 9. Adopt the following new rule 223—48.10(303,404A):

**223—48.10(303,404A) Project commencement.**

**48.10(1)** Once a tax credit reservation is made for a project, actual construction must begin on the project prior to the end of the state fiscal year in which the SHPO approved part two of the application. The applicant shall notify the SHPO of the commencement date of actual construction and, if the estimated qualified rehabilitation costs for the project exceed \$500,000, shall submit a certified statement by a certified public accountant confirming expenditure of at least 10 percent of estimated qualified rehabilitation costs prior to the end of the state fiscal year in which the SHPO approved part two of the application.

**48.10(2)** In lieu of commencement of actual construction prior to the end of the state fiscal year in which the SHPO approved part two of the application, an applicant may notify the SHPO that the project identified in part two of the application was awarded low income housing tax credits (LIHTC) from the Iowa finance authority in the same fiscal year in which the SHPO approved part two of the application.

**48.10(3)** In the event actual construction on a project does not commence prior to the end of the state fiscal year in which the SHPO approved part two of the application in accordance with subrule 48.10(1) or 48.10(2), the SHPO shall recapture the tax credit reservation and utilize those tax credit funds for additional applications in accordance with the provisions of rule 223—48.8(303,404A).

ITEM 10. Amend renumbered rule 223—48.11(303,404A) as follows:

**223—48.11(303,404A) Abandonment of tax credit reservation.**

**48.11(1)** If there has been no contact with the SHPO by the applicant ~~prior to~~ between project commencement confirmed in accordance with rule 223—48.10(303,404A) and the estimated project completion date shown on the approved part two of the application, the SHPO shall, by registered U.S. mail sent to the last-known address of the applicant, request that a status report be filed with the SHPO within 30 days of the date of the letter. The SHPO shall notify an applicant that the project will be considered abandoned and the SHPO will recapture the tax credit reservation unless the applicant submits a status report that documents actual construction on the project within 30 days of the date of the letter.

**48.11(2)** If the SHPO has not received a status report that documents actual construction on a project by the deadline, then the SHPO shall notify an applicant by registered U.S. mail sent to the applicant's last-known address that the project has been abandoned and the tax credit reservation has been recaptured because the conditions of subrule ~~48.10(1)~~ 48.11(1) have not been met.

**48.11(3)** The SHPO shall return any recaptured tax ~~credits~~ credit reservations to the appropriate funding queue in the pool of tax credits available for other rehabilitation projects.

**48.11(4)** This rule shall also apply to any project that received approval for part two of the application on or before June 30, 2007.

ITEM 11. Amend renumbered subrule 48.12(2) as follows:

**48.12(2)** If the SHPO has not received a complete part three of the state historic tax credit application by the deadline, then the SHPO shall notify an applicant by registered U.S. mail sent to the applicant's last-known address that the project has been abandoned and the tax credit reservation has been recaptured because the conditions of subrule ~~48.11(1)~~ 48.12(1) have not been met.

ITEM 12. Amend renumbered rule 223—48.16(303,404A) as follows:

**223—48.16(303,404A) Application processing fees.** A nonrefundable fee for application processing of parts two and three of an application will be charged for review of requests for certification of a rehabilitation project for historic tax credits. An initial review fee will be due with the filing of part two of an application. An additional fee for review of completed rehabilitation work will be due with the filing of part three of an application. Fees will be based on the amount of qualified rehabilitation costs. The fee schedule is as follows:

Part 2 Review Fee	For projects with qualified rehabilitation cost of:	
Residential (1-2 units) & barns <del>built before 1937</del>	Under \$50,000	No cost
Residential (1-2 units) & barns <del>built before 1937</del>	\$50,000 and over	\$250
Commercial or mixed-use properties (includes residential 3+ units)	Any amount	\$500
Part 3 Review Fee	For projects with qualified rehabilitation cost of:	

Residential (1-2 units) & barns <del>built before 1937</del>	Under \$50,000	No cost
Residential (1-2 units) & barns <del>built before 1937</del>	\$50,000 and over	\$250
Commercial or mixed-use properties (includes residential 3+ units)	Under \$50,000	\$250
Commercial or mixed-use properties (includes residential 3+ units)	\$50,000 to \$1,000,000	.5 percent (.005) of qualified rehabilitation costs
Commercial or mixed-use properties (includes residential 3+ units)	Over \$1,000,000	\$5,000

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